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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW,
Room TWB-204
Washington, DC 20554

Re: Ex Parte, IB Docket No. 04-398, The Effect of Foreign Mobile Termination Rates on U.S. Customers.

Dear Ms. Dortch:

The comments and reply comments filed in this inquiry demonstrate that U.S. calls to foreign mobile phones on over 150 routes are now subject to higher rates that are frequently both highly discriminatory and far above cost. The record also shows there is little prospect that these high rates will be reduced to reasonable, non-discriminatory and cost-based levels through retail-level competition or the actions of foreign regulators. While some regulators have recognized that foreign mobile competition at the retail level exercises little or no constraint on foreign mobile termination rates, very few regulators have been willing to mandate adequate rate reductions. As shown by the analysis of foreign regulatory activity in Appendix B to the Notice, and as further highlighted by the 55-country analysis submitted by Verizon, only a very small number of foreign countries have required foreign mobile carriers to reduce these rates to levels that even approach non-discriminatory and cost-based levels.

The failure of the overwhelming majority of countries to take effective action to reduce rates as shown by Appendix B to the Notice and Verizon's analysis, and continuing actions by regulators in some of these countries to encourage higher rates, make clear that U.S. consumers can expect little relief from present high charges to call foreign mobile phones from the efforts of foreign regulators. With increasing volumes of U.S. calls to foreign mobile networks resulting from the rapid and continuing worldwide growth in mobile telephony, the Commission should prevent further U.S. consumer subsidization of foreign carriers through high foreign mobile termination rates by establishing and enforcing new international settlement rate benchmarks for mobile termination.

1. Mobile termination rates remain far above non-discriminatory and cost-based levels.

The Commission has emphasized that "nondiscriminatory treatment of U.S. carriers would require that foreign carriers assess a comparable charge for the network elements necessary for international termination services as they charge their own customers."[1] Termination rates for calls to foreign mobile phones are far above any such comparable charge today. The unrebutted evidence provided by the R-TCP 65-country study filed by AT&T in February 2004, and highlighted for comment in the Notice (¶ 27), shows that, based on the rates foreign carriers in 65 countries charge their own customers for the network elements used for those termination services, the comparable charge and a generous cost ceiling for international call termination on mobile phones, including the international transmission and switching services provided by foreign international carriers, is no higher than 8 cents.[2] Similarly, the comparable charge and a generous cost ceiling for call termination on mobile networks (*i.e.*, excluding the international transmission and switching services provided by foreign international carriers) is no higher than 5 cents.[3] No commenter has demonstrated that these findings by the AT&T study are incorrect. Sprint, a U.S. mobile carrier, cites long-run incremental costs for mobile termination of 6.6 cents in 2000 and 3.9 cents in 2002,[4] and mobile termination costs have continued to decline since then. MCI states that fixed to mobile rates should be no higher than 4-7 cents.[5]

Foreign mobile carriers not only fail to offer any facts to rebut the findings of the R-TCP model but also provide no evidence that their termination charges are based on cost. Indeed, many foreign mobile carriers offer no justification for their high termination rates at all and most are not even willing to disclose them. Other foreign mobile carriers

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[1] *International Settlement Rates*, Report and Order, 12 FCC Rcd. 19,806, ¶ 67 (1997) ("Benchmarks Order").

[2] *See* AT&T Comments at 42-49 & Att. A; AT&T Reply at 32-38; Letter and attachments dated Feb. 5, 2004 to Marlene Dortch, FCC, from Douglas Schoenberger, AT&T, IB Docket No. 02-324. The R-TCP study uses half of the tariffed rates foreign mobile operators charge their own customers to make on-net calls, which include termination of those calls on their networks, minus avoided retail costs. No foreign mobile carrier or other commenter has shown that benchmarks based on foreign carrier tariffs in this manner would fail to cover the forward-looking economic costs of call termination on foreign mobile networks, including a reasonable share of joint and common costs. Rather, because of the non-competitive nature of many foreign markets, foreign carrier tariff-based benchmarks would likely far exceed underlying termination costs. The generous nature of this cost ceiling is further demonstrated by the continuing decline in mobile costs. Merrill Lynch reports that the weighted average total revenue per minute for U.S. mobile operators fell from $0.11 in 2003 (first quarter) to $0.08 in 2005 (first quarter), while their weighted average EBITDA margins were virtually unchanged at 30.4% in 2003 (first quarter) and 29.5% in 2005 (first quarter). Merrill Lynch, U.S. Wireless Services, May 13, 2005, Tables 22 & 28.

[3] In addition, the comparable charge and a generous cost ceiling for the *additional* services provided by foreign international carriers to terminate international calls to foreign mobile phones (*i.e.*, beyond those used to terminate international calls on foreign fixed networks) is no higher than 4 cents. AT&T Comments, Att. A (showing R-TCP mobile incremental rate of 4.04 cents).

[4] Sprint Comments at 13.

[5] MCI Comments at 30.

attempt to justify these rates by citing the different demand characteristics under "Calling Party Pays" regime and thus acknowledge that high mobile termination rates are simply the result of mobile operators' ability to charge high rates under CPP.[6]

There is certainly no basis to claims that minor reductions in some foreign rates demonstrate that no Commission action is required. The Commission made clear in establishing the original benchmarks in 1997 that it is irrelevant that above-cost settlement rates may have declined from former even higher levels if those rates still remain unreasonably high. While citing a reduction in average settlement rates between 1992 and 1996 amounting to almost thirty percent, the Commission noted that despite those reductions, "settlement rates remain significantly above the cost of providing international service" and went on to establish the current benchmarks.[7] That is also the situation today with regard to foreign mobile termination rates, as shown both by the R-TCP model and the cost estimates put forward by other commenters. These rates are far in excess both of underlying costs and of the levels required to provide equitable treatment to U.S. carriers and consumers.

The large majority of countries where U.S. carriers must pay high mobile rates today are most unlikely to require their mobile operators to reduce rates to anywhere near the levels that would provide equitable treatment to U.S. carriers and consumers. In Europe, which has seen by far the most regulatory activity on this issue, the European Commission reports that weighted average mobile termination rates for mobile operators in the EU15 countries in 2004 remained at 14.77 Eurocents (almost 18 U.S. cents).[8] As aptly noted by Sprint, even if a steady decline of 8 percent a year is optimistically assumed from the efforts of European regulators, the average rate in Europe will not reach 10 cents – *twice as high* as the comparable charge and generous cost ceiling for call termination on foreign mobile networks shown by AT&T's study – for another six years.[9] Elsewhere, particularly in Asia, and Central and Latin America, where the number of international calls to mobile phones is increasing at a far greater rate, regulators have been even slower in responding to this issue.

Moreover, U.S. carriers are subject to additional charges for calls to foreign mobile networks beyond the amounts charged by foreign mobile operators. U.S. carriers generally do not terminate traffic directly with foreign mobile carriers and must pay the rates charged by the foreign international carriers with which they have correspondent relationships.[10] AT&T believes that in many cases it is charged additional non-cost-based

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[6] *See* AHCIET Comments at 4-5; Telefonica Comments at 8.

[7] *International Settlement Rates*, 12 FCC Rcd. 6184, ¶¶ 26-27 (1996) (Notice of Proposed Rulemaking).

[8] Commission of the European Communities, European Electronic Communications Regulation and Markets 2004 (10th Report), Dec. 12, 2004, Staff Working Paper, Vol. 1, at 65.

[9] Sprint Reply at 5. As described above, this 5-cent cost ceiling shown by the AT&T study covers only call termination on foreign mobile networks and therefore provides an "apples to apples" comparison with the termination rates charged by foreign mobile operators.

[10] AT&T Comments at 42; AT&T Reply at 28-29. Additionally, the large majority of AT&T's foreign correspondents in countries where AT&T must pay a higher rate for calls to mobile phones are affiliated with mobile operators in their countries. AT&T Comments at 40-41 & Att. A. For these foreign international carriers, their mobile affiliates' high termination charges are "simply a 'left pocket-right pocket' transaction between two subsidiaries of the same company." *See Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1233 (D.C. Cir. 1999).

amounts beyond the rates charged by foreign mobile carriers. Foreign international carriers also obtain additional margin by failing to provide sufficient credit for the fixed termination services not required for mobile-terminated calls. As described above, the R-TCP study shows that the comparable charge and a generous cost ceiling for all services provided by foreign international carriers to carry U.S. calls from their mid-ocean hand-off by U.S. carriers to their termination on foreign mobile networks is no higher than 8 cents. The comments filed by U.S. international carriers in this proceeding make clear that many of the rates charged by foreign international carriers for mobile-terminated calls are far above this level. Nonetheless, to AT&T's knowledge, no foreign regulator has addressed the rates charged by foreign international carriers for these calls.

The inadequacy of foreign regulators' efforts to address mobile termination is highlighted by Appendix B to the Notice, which identifies only sixteen countries as taking any action, and shows that very few are taking meaningful steps to reduce rates. *See* AT&T Comments at 23-26; AT&T Reply at 13-18. Verizon's study of 55-countries similarly shows that only a small number of countries have mandated reductions that even approach the level necessary to provide equitable treatment.

2. Verizon's analysis demonstrates that foreign regulatory action will not reduce rates to reasonable, non-discriminatory and cost-based levels.

As AT&T described in its comments, in the large majority of countries where U.S. carriers are required to pay higher rates for calls to mobile phones, foreign regulators are doing nothing to address mobile termination. Even where some action has been taken, most regulators have failed to mandate any reductions in rates, have required reductions that are clearly inadequate, or have postponed reductions for an unacceptably long period. Some commenters suggest that the reason for this lack of action is government ownership interests in foreign incumbent carriers and their mobile affiliates, and even Vodafone concedes that some regulators believe that smaller mobile carriers should be allowed to charge high termination rates.[11] Whatever the reason for their inactivity, few regulators have mandated reductions in rates that even approach the level shown by the R-TCP study as necessary to provide non-discriminatory and more cost-based treatment to U.S. carriers and consumers.

A number of foreign regulators have highlighted the need for effective action to reduce high foreign mobile termination rates by finding that mobile operators in CPP regimes have market power over termination on their networks. As AT&T described in its comments, mobile carrier claims that their termination rates are limited by competitive market forces have been overwhelmingly rejected by the foreign regulators that have considered this issue, including the New Zealand Commerce Commission, which recently reaffirmed this conclusion.[12] Other foreign regulators have found that mobile termination in CPP systems is a separate product market from retail mobile services, that each mobile network operator controls the market for termination on its network and, therefore, that

[11] *See* INTUG at 5; Softbank BB at 3, 8; Vodafone at 22.

[12] *See* New Zealand Commerce Commission, *Final Report of the Schedule 3 Investigation Into Regulation of Mobile Termination*, Jun. 9, 2005, at 36 (dismissing arguments by Vodafone and New Zealand Telecom "suggest[ing] that the relevant market would encompass both retail and wholesale services" and finding that there is "a national wholesale market for mobile termination services on each mobile network").

mobile operators are able to set their termination rates at unreasonably high levels. Unfortunately, most foreign regulators have not acted in accordance with these findings by mandating necessary reductions in mobile termination rates, as shown by the analysis submitted by Verizon.

Verizon claims that fifty-five countries "have taken action or can be expected to do so in the foreseeable future," Verizon Reply at 2, but demonstrates that effective action has been taken by very few. A significant number of countries cited by Verizon have issued no decision at all, have issued a decision finding market failure but without imposing any mandatory price control remedy, or have condoned mobile termination rate increases to US consumers. For the remaining countries Verizon includes that have taken some action to reduce egregiously above-cost rates, the vast majority continue to allow rates well above cost. Only a few regulators have mandated rates that approach a cost-oriented range. Verizon identifies only one country (Israel) where the regulator has required rates to be reduced to the 5-cent level required by the R-TCP model (by 2008) and only five more where the regulator has required rate reductions even to twice this level.[13] (Additionally, as AT&T has previously noted, Korea has mandated a mobile interconnection rate of 5 cents.) This evidence strongly supports AT&T's prior demonstration that the amount of effective regulatory action is very small, and that few countries have reduced rates to reasonable and cost-oriented levels. AT&T Reply at 14.

Preliminarily, regulators have taken no action at all in the overwhelming majority of countries where mobile operators are charging an above-cost mobile termination charge. AT&T pays a mobile surcharge on routes to almost 150 countries, almost a four-fold increase from the 30 routes on which AT&T paid a mobile surcharge in 2001, and a trend that shows no signs of reversal by market forces alone. Verizon offers no evidence to dispute the lack of regulatory action in 100 of these countries. Moreover, Verizon includes in its list seven countries that might take action in the future, but that admittedly have done nothing at this time. These include Cyprus, Estonia, Germany, Latvia, Luxembourg, Slovenia and South Africa. Based on the lengthy duration and muted outcome of proceedings in most other countries, and the ferocity with which mobile operators such as Vodafone are fighting every proposal to reduce their call termination subsidies, it is premature for the Commission to take any comfort whatsoever that regulators in these eight countries will implement effective measures to reduce rates to cost-oriented levels. Germany is an instructive example, given REGTP's repeated insistence that they see no need to impose price reductions for mobile termination charges, notwithstanding admonitions to the contrary raised by the European Commission.

Verizon also lists several countries that have confirmed a mobile termination market flaw, but have taken no action to mandate an effective remedy. AT&T commends the regulators in such countries for their analysis of market failure under the CPP model, but has serious doubts whether such analysis will have any effect on the monopolistic pricing practices of mobile operators if not accompanied by mandatory price controls.

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[13] In one of these five countries (Sweden), these rates have been appealed by Vodafone and Tele2 and consequently have not been implemented for these carriers. The other countries are Nigeria, Pakistan, Romania and Tanzania.

For example, the Danish National IT and Telecom Agency concluded an initial market review on mobile termination in November 2004, but did not impose any price control remedy.[14] The Austrian Telekom-Control-Kommission ("TKK") similarly concluded in September 2004 that each mobile network operator in Austria has SMP for the provision of wholesale mobile call termination services, but decided to implement cost-orientation obligations *only if* commercial negotiations between operators fail.[15]

Australia and New Zealand also feature on the Verizon list of foreign regulatory frameworks and actions. Both the Australian Competition & Consumer Commission ("ACCC") and the New Zealand Commerce Commission ("ComCom") have completed exemplary studies of the wholesale mobile termination market, and both used a comprehensive cost-modeling study to determine target termination charges. However, both the ACCC and ComCom confirm that their rate reduction targets are mere "recommendations," with no mandatory effect at this time. The rates may be used as persuasive guidelines, but only as part of an arbitration proceeding subsequent to failed attempts at commercial negotiation between operators. Predictably, mobile operators are treating these recommendations at face value, maintaining rates above recommended targets while appealing the regulators' decisions and extending commercial rate negotiations. Present mobile surcharge settlement rates in Australia remain above the ACCC's January 2005 target, and in New Zealand the ComCom already acknowledges that the effect of its proposed regulation may be on hold until at least 2007 because of the requirement for operators to first try to negotiate new agreements before seeking regulatory intervention.[16] Clearly, these proceedings demonstrate admirable efforts, but the lack of effective action provides no certainty that U.S. consumers will be adequately protected in the foreseeable future by any regulator other than the FCC.

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[14] Available at http://www.itst.dk/static/Markedsundersogelser/Marked16/UdkastAnalyse16.pdf (Danish Only).

[15] *See* Case AT/2004/0099: voice call termination on individual mobile networks – Comments pursuant to Article 7(3) of Directive 2002/21/EC (Oct. 7, 2004). The EC's comment on TKK's decision to forbear from imposing a price control is insightful: "While in principle the undertakings should themselves negotiate in good faith their access and interconnection agreements, the imposition of price control obligations may prove appropriate where market analysis in a particular market reveals that competition is inefficient and insufficiently strong to prevent excessive pricing. From this perspective, leaving the setting of cost-oriented termination charges to commercial negotiations between operators does not seem the most effective way of dealing with the identified competition problem. . . . . [I]t is unclear on what basis TKK believes that commercial negotiations will lead on a short term to cost-oriented prices." *Id.* at 3-4.

[16] *See* Tom Pullar-Strecker, *Cheaper Calls on Hold Till 2007*, Dominion Post, Jun. 20, 2005.

3. Regulatory action in some of Verizon's countries is encouraging *increased* mobile termination rates.

The imminent risk to U.S. consumer interests is most evident in a third category of countries on Verizon's list. These are countries that have either allowed or tacitly encouraged their operators to increase wholesale mobile termination charges paid by US international carriers. In some instances, carriers in these countries have unilaterally disrupted circuits when US carriers refuse to pay the non-cost justified rate increase. Five countries on the Verizon list are the most notable in this harmful trend: Argentina, Ecuador, Jamaica, Nicaragua, and Mexico. Verizon cites the Argentine CNC Decree 764/2000 as evidence of relevant regulatory action, in which the CNC set price caps for fixed-to-mobile *end user* prices. Verizon Reply at Attachment B, p.1. Notably, this CNC Decree does not impact wholesale mobile termination rates. The wholesale mobile termination charge from Argentine correspondents to AT&T remains approximately 50% in excess of those end user rate caps set in Decree 764/2000. When AT&T initially refused to pay this extraordinary surcharge, U.S. to Argentina mobile-terminating traffic was blocked for a period of 18 months between January 2003 and June 2004.

This damaging pattern of non-cost justified unilateral rate increase, as followed by circuit disruption has repeated in Nicaragua, Ecuador and Jamaica. Verizon cites a May 2004 regulatory action to reduce mobile termination rates by TELCOR in Nicaragua, but in fact, the TELCOR decision *raised* the settlement rate that AT&T paid by 50%.[17] As in Argentina, Nicaraguan carriers blocked all mobile terminating traffic when US international carriers would not agree to pay the increase, this time from a period between December 2004 through March 2005. Similarly in Ecuador, the regulator SENATEL has taken no action to decrease wholesale mobile termination rates. Rather, U.S. to Ecuador mobile terminating traffic has been disrupted since March 2005 because AT&T and other carriers would not agree to a non-cost justified mobile termination rate increase in excess of 100% from the existing rate agreement.

The most recent example of harm to U.S. consumers came from Jamaica – another country favorably cited by Verizon -- where in March 2005 the Ministry of Commerce, Science and Technology issued an order imposing a $0.02 per minute increase in international mobile termination rates. Once again, when U.S. carriers insisted on negotiation rather than agreement to pay the unjustified surcharge on international inbound calls, Jamaican carriers blocked calls from the U.S. In each instance, and contrary to Verizon's assertions, foreign mobile termination rates increased, foreign regulators failed to effectively oversee mobile termination rates, and there was explicit discrimination against U.S. customers.

The regulator has also acted to increase mobile termination rates in Colombia, which is a further country cited favorably by Verizon. The Colombian carrier, Orbitel, reports that, since the Colombian Telecommunications Regulatory Commission issued Resolution 463 mandating increased mobile termination rates in December 2001, termination rates on mobile networks for international calls in Colombia have increased

[17] TELCOR, Acuerdo Administrativo No. 074-2004.

by 109% per year in the period from 2002 to 2005.[18] In another of Verizon's countries, Brazil, legislation became effective this year requiring fixed to mobile termination rates to be negotiated by operators rather than being set by the regulator. As the result of these new procedures, one group of Brazilian fixed and mobile carriers recently entered into an agreement to increase fixed to mobile termination rates, and the Brazilian regulator, Anatel, has approved this increase.[19]

The current harm to U.S. consumers from subsidizing foreign mobile network operators could be eclipsed by future increases, particularly if the Commission were to accept Verizon's advice to "monitor" foreign mobile termination rates, and to primarily entrust U.S. consumer interests to foreign regulators. Nowhere is the risk of FCC inaction more apparent than with Mexico – yet another country included in Verizon's evidence of positive foreign regulatory frameworks and actions. Verizon Reply, at Attachment B, p.6. In Mexico, the regulator was recently authorized to proceed with its proposal to introduce the CPP regime for international calling.[20] The huge potential adverse impact on U.S. consumers of any such move is demonstrated by the TeleGeography study submitted by CTIA showing U.S. calling volumes of almost 2.5 billion minutes to mobile phones in Mexico in 2003 – more than three times greater than those to *any other* country.[21] Any application of the current CPP termination rate of 20 cents used for local calling in Mexico would raise current termination rates for U.S. calls to mobile phones in Mexico by 400 percent and increase U.S. settlement out-payments to Mexico by more than $400 million.[22]

Including Verizon's reply comments, the Commission's record in this proceeding irrefutably demonstrates that the amount of effective regulatory action to reduce mobile termination rates remains very small, few countries have reduced rates to reasonable and cost-oriented levels, and the risk of future rate increases harming U.S. consumer interests remains definite. Verizon's analysis thus provides further confirmation that the Commission should take immediate action to reduce termination charges for U.S. calls to foreign mobile phones by establishing new international settlement rate benchmarks for mobile termination.

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[18] Orbitel Reply at 3-4.

[19] *See* BNamericas.com, Anatel Waives Requirement For Common Interconnection Agreement, Jun. 9, 2005; Dow Jones, Brazilian Telcos OK Fixed-to-Mobile Rate Hike, Apr. 7, 2005.

[20] On May 31, 2005, Mexico's Commission on Regulatory Procedures authorized Cofetel, the telecommunications regulator, to proceed with publication of the resolution establishing the CPP regime for international and domestic long distance calls to mobile phones in Mexico. Coordinacion General De Mejora Regulatororia De ServiciosY De Asuntos Juridicos, COFEMER/05/1358, Mary 31, 2005.

[21] CTIA Reply, Attachment at 7.

[22] TeleGeography cites reductions in mobile termination costs to the ten largest destinations for U.S. calling to mobile phones but fails to mention that almost half this calling is to Mexico, which uses the RPP regime and currently does not charge a higher rate for calls to mobile phones, even without taking account of calls to mobile phones in Canada, another RPP country. *Id.*

This *ex parte* letter is submitted for inclusion in the record of the above-referenced proceeding.

Respectfully submitted,

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